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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-848

WILLIAM AGOSTI,

Petitioner

v.

HARRY HUGE, PAUL R. DEAN, and C. W. DAVIS, TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

ROBERT C. HANDWERK
927—15th St. N.W.
Washington, D.C. 20005,
Attorney for Petitioner

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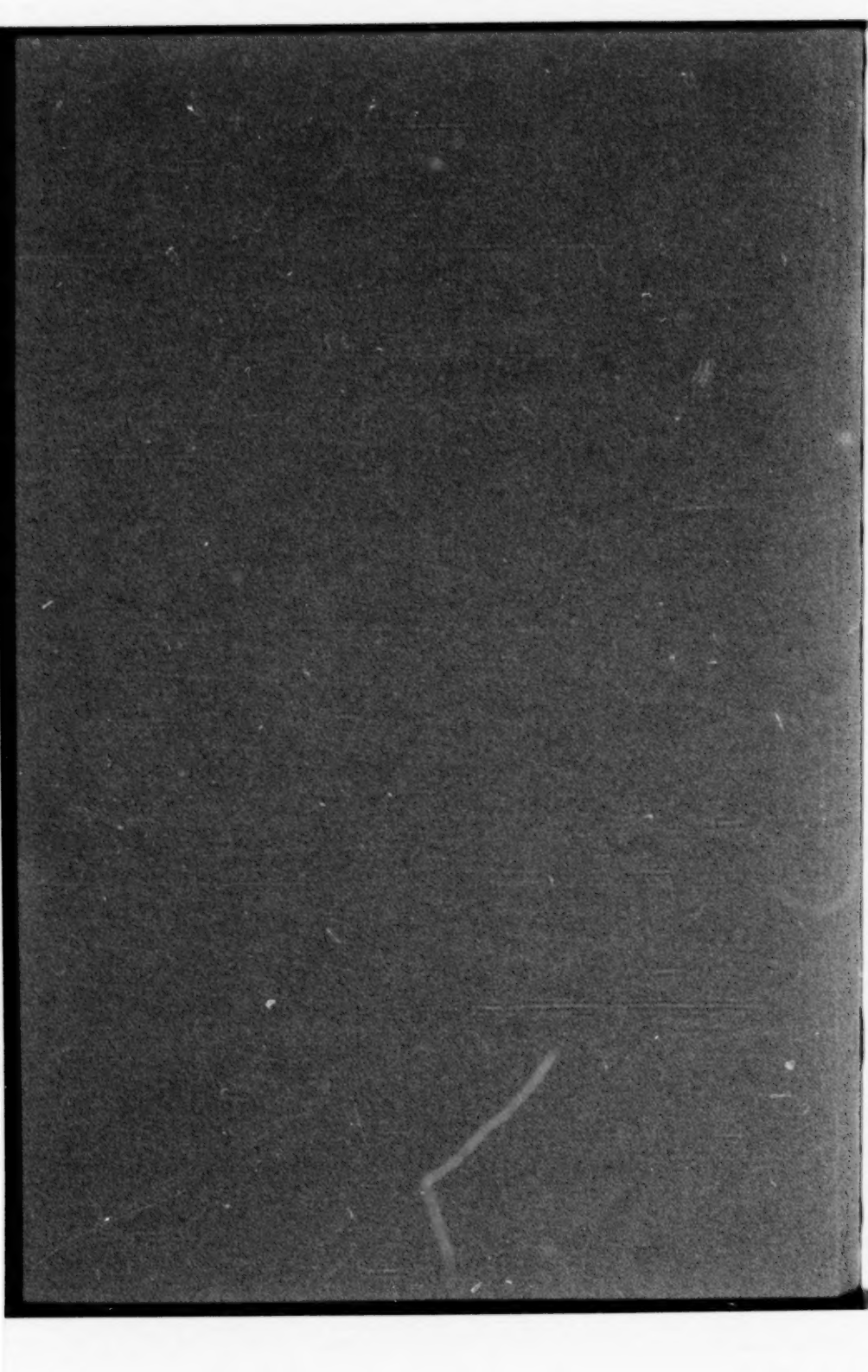

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Petitioner, William Agosti, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this proceeding on September 23, 1975.

OPINION BELOW

The Court of Appeals rendered no written opinion, but its judgment affirmed an opinion of the lower court dated July 22, 1974. The judgment and opinion appear in the Appendix to this petition at pages 1a to 7a .

JURISDICTION

The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, U.S.C., Sec. 1254 (1).

QUESTIONS PRESENTED

1. Does the petitioner have vested rights to pension in the United Mine Workers of America Welfare and Retirement Fund of 1950, having worked as a coal miner for 30 years and contributed to the Pension Fund for 4½ years through payments made by his employers?

2. Should the denial of petitioner's vested rights by the respondent trustees of the Fund be adjudicated arbitrary, capricious, inequitable, and confiscatory?

3. Was it a proper administration of the trust by the trustees in passing resolutions and regulations peremptorily cutting off years of coal mine employment by petitioner as was done in his case and divest him of pension rights?

4. Was it fair and equitable for the trustees of the Pension Fund to discriminate against petitioner in demanding that he had to work 20 years in the coal mines within the 30-year period his application was filed, the trustees having waived such requirement for thousands of similar miner applicants for pension?

5. Should petitioner's vested rights to pension be denied on the sole ground that he did not apply for pension until years later after his retirement?

6. Can petitioner's vested rights to pension in 1950 be arbitrarily confiscated by respondents by requiring for the first time in 1972 a period of five years' employment in mines contributing to the Fund since May 28, 1946, instead of a lesser period?

STATUTE AND TRUST INDENTURE INVOLVED

The pension and retirement fund under which petitioner was denied pension was created pursuant to Sec. 302 (c) (5), Labor Management Relations Act, 1947, (61 Stat. 157; 29 U.S.C., Sec. 186 (c) (5); known as the Taft-Hartley Act.

The trust indenture involved here for interpretation and enforcement by this Honorable Court appears in the appendix hereto at pages 9a-14a.

STATEMENT OF THE CASE

A. Introductory

The Labor Management Relations Act, *supra,* authorizes employers to make payments to trust funds established by employers and unions for the exclusive benefit of the employees, their families, and dependents. This case involves the proper administration by respondents of one such trust fund, the United Mine Workers of America Welfare and Retirement Fund of 1950, which was established by the trust indenture contained in the National Bituminous Coal Wage Agreement of 1950.

B. Facts of This Case

Petitioner was born on March 7, 1906 and commenced work in the coal mines as a classified miner at the tender age of 14 years. He continuously worked as such from May 1920, through May 14, 1950, at the old and new Shawmut Mining Company, a period of 30 years, which respondents concede. His reason for retirement was fractured ribs sustained during said employment. In 1950 he was 40 years of age and could not file for pension at that time because he was required to be 60 years of age at time of application. In 1965

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the trustees lowered the age limit for such applicants to 55 years of age; and on April 6, 1970, he filed his application for pension. The application was denied by the Fund on June 26, 1970, on the sole ground that he had not completed 20 years of service in the mines within the 30-year period immediately preceding the date his application was filed or received at the Fund. On October 28, 1972, the respondents, or their predecessors, entirely abandoned the 20-30 year requirement; and substituted instead for the first time a requirement that an applicant for pension had to work in a mine, or mines, who paid into the Fund for a period of five years after May 28, 1946. The only further requirements were that the applicant had worked in the mines 20 years and reached age 55.

C. The Decisions Below

The District Court for the D.C. in 1974, (Augsti v. Huge, et al., 378 F. Supp. 1322) sitting as an equity court, erroneously upheld the respondents' contention that the 20-30 requirement should be enforced against the petitioner, despite the fact that in Blankenship v. Boyle, consolidated civil actions Nos. 2186-69 and 2350-69 (involving, as the court noted, between 9,000 and 20,000 retired miners and widows), the 20-30 *requirement was waived and not applied.* The District Court also erroneously held that the said 5-year contribution to the Fund, required for the first time 26 years after May 28, 1946, was applicable to petitioner, although it was not so required when he retired in 1950; nor when he filed his application for pension in 1970. His rights to a pension were struck down by the District Court by virtue of the new 1972 requirement which the court applied retroactively to petitioner. The Court further held that to hold otherwise could possibly be detrimental to the Fund itself, having not

a shred of evidence to support same. Judgment was entered accordingly as appears in Appendix hereto at page 15a. The U.S. Court of Appeals for the D.C. Circuit affirmed said judgment by its own Judgment (Appendix page 7a) on the basis of the Memorandum Opinion of the District Court, appearing in the appendix hereto at pages 1a-6a. The petitioner pointed out to the higher court that the settlement in Blankenship, *supra,* was not detrimental to the Fund itself. The unexpended balance of the Fund at end of fiscal year June 30, 1973, amounted to $83,575,429; and as of March 31, 1974, it amounted to $91,957,378.18, an increase of over eight million. During this period the bulk of the Blankenship settlement payments had been made, resulting in no detriment to the Fund as the lower court feared without any supporting facts.

REASONS FOR GRANTING THE WRIT

This is a labor test case by petitioner which affects as well the pension rights of thousands of other retired coal miners residing in Pennsylvania, West Virginia, Alabama, Kentucky, Ohio, etc., who have been denied pensions because they lacked 5 years of employment in contributory coal mines who paid into the Fund for pension rights of miners since May 28, 1946 when the Fund started. Ever since 1946 to 1972, the trust fund was administered by trustees who promulgated no requirement of such service of five years. In 1972 the respondents, or their predecessors, adopted this requirement arbitrarily in passing Resolution No. 90, effective October 28, 1972. They have capriciously without cause applied it to old coal miners, such as petitioner, applying it retroactively to 1950 against miners who retired prior to 1972.

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Petitioner submits that neither the Labor Management Relations Act, 1947; the Trust Indenture contained in the National Bituminous Coal Wage Agreement of 1950; nor subsequent coal wage agreements; nor any resolutions or regulations of the trustees from 1950 to 1972 authorize or require 5 years of payments to the Fund. This unwarranted requirement in 1972 was not a proper exercise of the trustees' discretion and the lower federal courts in the District of Columbia held it proper and equitable.

To emphasize the conflict of decisions in the D.C. Circuit on the said 5-year requirement, we call this Honorable Court's attention to the strong dissenting opinion by Judge Tamm, joined in by Judge Wilkey, in the class actions of Pete, et al v. United Mine Workers of America Welfare and Retirement Fund of 1950, et al., No. 73-1270, reported in 517 Fed. 2nd at 1275; and Kiser, et al. v. Huge, et al. and United Mine Workers of America Welfare and Retirement Fund of 1950, No. 73-1393, reported in 517 Fed. 2d at 1275 consolidated appeals, decided en banc by the U.S. Court of Appeals for the D.C. Circuit on February 12, 1975.

We quote the following pertinent abstracts from the dissenting opinion:

> * * * "However, I strongly dissent from Part II of the majority opinion which limits relief to members of the plaintiff classes with at least five years of signatory service. * * *. The majority's conclusions is certainly not dictated by the precedents it relies upon, nor does it represent anything more than the promulgation of retroactive eligibility requirements for a private trust by a federal appellate court. * * *. To bolster this holding the majority places reliance upon the decision in Roark II, Judge Gesell's analysis of the Blankenship

> settlement and the Taft-Hartley Act itself as all pointing to the establishment of a five-year requirement. Under closer scrutiny, none of these provide a foundation for what is in reality the appellate imposition of such a retroactive criterion, *Res Judicata facit de albo nigrum et de quadrato rotundum.* * * *. * * * Throughout its opinion, the majority 'speaks of fulfilling the spirit of the Taft-Hartley proviso'. That provision, Sec. 302 (c) (5) of the Taft-Hartley Act, 29 U.S.C. S.186 (1970), authorizes the establishment of funds for the 'benefit of employees.' Section 302 (c) (5) contains no reference to a five-year service eligibility standard for trusts authorized under it. There is nothing in the legislative history which remotely suggests such a mandatory requirement. In fact the only fair reading of the relevant legislative history is that Congress intended the development of eligibility criteria to remain exclusively within the province of labor-management relations. Finally, there clearly is no statutory authority for the proposition that when the Trustees establish the contributory employment standard below the level where some members of this court might set it, this court can impose its own standard. * * * Stripped to its simplest form, the majority, while proclaiming that the Trustees' present proposal is not arbitrary or unreasonable, is in reality simply legislating by judicial fiat a five-year contributory employment requirement." * * *

Another reason for granting the writ is that the U.S. Court of Appeals at argument of petitioner's case refused to grant petitioner pension on a pro-rated basis; or fractional basis. Petitioner is equitably entitled to 90% of the $200 a month now paid by respondents in the event the 5-year contributory employment requirement is found equitable and legal by this Honorable Court. This would be based, in part, upon his 30

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years' employment in the coal industry and the number of years his employers paid into the Fund for petitioner's pension. Such a pro-rata is now required by the Employee Retirement Income Security Act of 1974, dated Sept. 2, 1974, 88 Stat. 829. The main requirements of this new piece of pension legislation are that the employees' equitable rights be recognized and enforced on a pro-rata and fractional basis predicated on years of employment; payments into pension trusts; age; etc. This new act gives vested rights to pension in favor of employees with only 10 years of employment. Here, the petitioner had 30 years of service but the lower courts held he had no vested rights to pension and forfeited the moneys he had already paid in through his employers.

This new pension law applies to old pension plans such as the one in the case at bar. This action of the lower courts impaired the obligations of petitioner's contract with the coal operators; the U.M.W.A. Union; and his membership therein.

Still another valid and urgent reason for granting the writ is that the U.S. Court of Appeals denied petitioner's motion to require respondents to file, as of September 1, 1975, in this case an uptodate financial report of the condition of the Fund; the last such report having been published as of March 31, 1974. In the administration of trusts, the trustees are equitably required to disclose to beneficiaries of the trust the amount of the unexpended corpus on hand; the obvious reason being the ability of the trust to make payments to beneficiaries, such as pensions to those who contributed. The lower court peremptorily refused such disclosure. This right of petitioner to a full and present accounting was denied petitioner without any reasons assigned

for the refusal. The order of the Court denying same appears in the Appendix at p. 16a.

CONCLUSION

This Honorable Court has not heretofore ruled on the vital questions presented herein to petitioner's knowledge; and as it also affects the equitable rights of thousands of other coal miners similarly situated, the petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

ROBERT C. HANDWERK
927—15th St. N.W.
Washington, D.C. 20005,
Attorney for Petitioner